

## § 230.256

of these securities in any state in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the laws of any such state.

(2) The Preliminary Offering Circular contains substantially the information required in an offering circular by Form 1-A (§239.90 of this chapter), except that information with respect to offering price, underwriting discounts or commissions, discounts or commissions to dealers, amount of proceeds, conversion rates, call prices, or other matters dependent upon the offering price may be omitted. The outside front cover page of the Preliminary Offering Circular shall include a bona fide estimate of the range of the maximum offering price and maximum number of shares or other units of securities to be offered or a bona fide estimate of the principal amount of debt securities to be offered.

(3) The material is filed as a part of the offering statement.

(b) If a Preliminary Offering Circular is inaccurate or inadequate in any material respect, a revised Preliminary Offering Circular or a complete Offering Circular shall be furnished to all persons to whom securities are to be sold at least 48 hours prior to the mailing of any confirmation of sale to such persons, or shall be sent to such persons under such circumstances that it would normally be received by them 48 hours prior to receipt of confirmation of the sale.

[57 FR 36468, Aug. 13, 1992, as amended at 61 FR 67202, Dec. 20, 1996]

## § 230.256 Filing of sales material.

While not a condition to an exemption pursuant to this provision, seven copies of any advertisement or written communication, or the script of any radio or television broadcast, shall be filed with the main office of the Commission in Washington, DC.

NOTE: Only sales material that contains substantive changes from or additions from previously filed material needs to be filed.

[57 FR 36468, Aug. 13, 1992, as amended at 61 FR 67202, Dec. 20, 1996]

## 17 CFR Ch. II (4-1-97 Edition)

## § 230.257 Reports of sales and use of proceeds.

While not a condition to an exemption pursuant to this provision, the issuer and/or each selling security holder shall file seven copies of a report concerning sales and use of proceeds on Form 2-A (§239.91 of this chapter), or other prescribed form with the main office of the Commission in Washington, DC. This report shall be filed at the following times:

(a) Every six months after the qualification of the offering statement or any amendment until substantially all the proceeds have been applied; and

(b) within 30 calendar days after the termination, completion or final sale of securities in the offering, or the application of the proceeds from the offering, whichever is the latest event. This report should be labelled the final report. For purposes of this section, the temporary investment of proceeds pending final application shall not constitute application of the proceeds.

[57 FR 36468, Aug. 13, 1992, as amended at 61 FR 67202, Dec. 20, 1996]

## § 230.258 Suspension of the exemption.

(a) The Commission may at any time enter an order temporarily suspending a Regulation A exemption if it has reason to believe that:

(1) no exemption is available or any of the terms, conditions or requirements of the Regulation have not been complied with, including failures to provide the Commission a copy of the document or broadcast script under §230.254, to file any sales material as required by §230.256 or report as required by §230.257;

(2) the offering statement, any sales or solicitation of interest material contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading;

(3) the offering is being made or would be made in violation of section 17 of the Securities Act;

(4) an event has occurred after the filing of the offering statement which would have rendered the exemption

hereunder unavailable if it had occurred prior to such filing;

(5) any person specified in paragraph (a) of § 230.262 has been indicted for any crime or offense of the character specified in paragraph (a)(3) of 230.262, or any proceeding has been initiated for the purpose of enjoining any such person from engaging in or continuing any conduct or practice of the character specified in paragraph (a)(4) of § 230.262;

(6) any person specified in paragraph (b) of § 230.262 has been indicted for any crime or offense of the character specified in paragraph (b)(1) of § 230.262, or any proceeding has been initiated for the purpose of enjoining any such person from engaging in or continuing any conduct or practice of the character specified in paragraph (b)(2) of § 230.262; or

(7) the issuer or any promoter, officer, director or underwriter has failed to cooperate, or has obstructed or refused to permit the making of an investigation by the Commission in connection with any offering made or proposed to be made in reliance on Regulation A.

(b) Upon the entry of an order under paragraph (a) of this section, the Commission will promptly give notice to the issuer, any underwriter and any selling security holder:

(1) that such order has been entered, together with a brief statement of the reasons for the entry of the order; and

(2) that the Commission, upon receipt of a written request within 30 calendar days after the entry of the order, will within 20 calendar days after receiving the request, order a hearing at a place to be designated by the Commission.

(c) If no hearing is requested and none is ordered by the Commission, an order entered under paragraph (a) of this section shall become permanent on the 30th calendar day after its entry and shall remain in effect unless or until it is modified or vacated by the Commission. Where a hearing is requested or is ordered by the Commission, the Commission will, after notice of and opportunity for such hearing, either vacate the order or enter an order permanently suspending the exemption.

(d) The Commission may, at any time after notice of and opportunity for

hearing, enter an order permanently suspending the exemption for any reason upon which it could have entered a temporary suspension order under paragraph (a) of this section. Any such order shall remain in effect until vacated by the Commission.

(e) All notices required by this section shall be given by personal service, registered or certified mail to the addresses given by the issuer, any underwriter and any selling security holder in the offering statement.

**§ 230.259 Withdrawal or abandonment of offering statements.**

(a) If none of the securities which are the subject of an offering statement have been sold and such offering statement is not the subject of a proceeding under § 230.258, the offering statement may be withdrawn with the Commission's consent. The application for withdrawal shall state the reason the offering statement is to be withdrawn, shall be signed by an authorized representative of the issuer and shall be provided to the main office of the Commission in Washington, DC.

(b) When an offering statement has been on file with the Commission for nine months without amendment and has not become qualified, the Commission may, in its discretion, proceed in the following manner to determine whether such offering statement has been abandoned by the issuer. If the offering statement has been amended, the 9-month period shall be computed from the date of the latest amendment.

(1) Notice will be sent to the issuer, and to any counsel for the issuer named in the offering statement, by registered or certified mail, return receipt requested, addressed to the most recent addresses for the issuer and issuer's counsel as reflected in the offering statement. Such notice will inform the issuer and issuer's counsel that the offering statement or amendments thereto is out of date and must be either amended to comply with applicable requirements of Regulation A or be withdrawn within 30 calendar days after the notice.

(2) If the issuer or issuer's counsel fail to respond to such notice by filing a substantive amendment or withdrawing the offering statement or does not